

C O M M O N W E A L T H O F M A S S A C H U S E T T S

Bristol, ss

Department of the Trial Court
District Court Department
Taunton Division

COMMONWEALTH OF MASSACHUSETTS

vs.

JOSEPH AMARO

No. 0231 CR 1053

COMMONWEALTH OF MASSACHUSETTS

vs.

DIMAS AMARO

No. 0231 CR 1054

VOL. I OF I

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HEARING ON THE MERITS, JURY-WAIVED
BEFORE THE HONORABLE GILBERT NADEAU

APPEARANCES:

FOR THE COMMONWEALTH:

DAVID A. KOLMAN, Assistant District Attorney

FOR THE DEFENDANT JOSEPH AMARO:

ROBERT C. HEROUX, Attorney at Law

FOR THE DEFENDANT DIMAS AMARO:

MICHAEL J. SUNESON, Attorney at Law

Taunton District Court
15 Court Street
Taunton, Massachusetts 02780
February 9, 2004

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(For each exhibit, it is not obvious the exhibit was received; and especially for Exhibit 2, it is not clear what the exhibit might be.)

1 THE COURT: With respect to Complaint Number
2 1054, Dimas Amaro, there are two counts?

3 ATTY. KOLMAN: That's correct, Your Honor.

4 THE COURT: Which allege the exact dates?

5 ATTY. KOLMAN: July 1st to June 2nd, 2001.

6 Your Honor, the Commonwealth is moving to amend
7 all the counts, instead of violation of 166, 42B, as
8 noted, just for court jurisdiction, to 166, 42A, where
9 I believe there is (inaudible) -- just for court
10 jurisdiction.

11 THE COURT: So is the Commonwealth moving to
12 amend it to Chapter 166, 42A.

13 ATTY. KOLMAN: That's correct, Your Honor.

14 THE COURT: On both 1053 and 1054.

15 UNIDENTIFIED DEFENSE ATTORNEY: Right, Judge.

16 UNIDENTIFIED DEFENSE ATTORNEY: Yes, Your
17 Honor.

18 THE COURT: But there are two counts -- there
19 are still two counts standing?

20 ATTY. KOLMAN: No, I'm sorry, Your Honor.
21 The Commonwealth's only dismissed one count as
22 duplicitous.

23 THE COURT: Okay. So count 2 of Complaint
24 Number 1054 is dismissed as being duplicitous.

1 Then I have all these motions that, Mr. Suneson,
2 that you had filed, right?

3 ATTY. SUNESON: (Inaudible) just leave those
4 aside, Judge. That's for the jury.

5 THE COURT: All right.

6 Mr. Joseph Amaro and Mr. Dimas Amaro.

7 Joseph?

8 MR. DIMAS AMARO: Dimas.

9 THE COURT: Dimas. Joseph.

10 I have in front of me both signed waivers of your
11 right to a trial by a jury. Did you sign that freely,
12 willingly, and voluntarily, both of you?

13 UNIDENTIFIED DEFENDANT: Yes.

14 OTHER DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. And you understand and
16 your lawyers explained to you that you have a right to
17 have this matter tried before a jury, which would
18 consist of seven individuals, six of whom would be
19 determining your guilt or innocence. And my role would
20 be to preside over that trial and to rule upon
21 objections and motions and to instruct the jury. And
22 my role -- by you waiving your right to a trial by a
23 jury, I become now the fact finder, and you're leaving
24 a decision with respect to your guilt or innocence up

1 to me.

2 Do you understand that, gentlemen?

3 UNIDENTIFIED DEFENDANT: Yes.

4 THE COURT: Are you doing that freely,
5 willingly, and voluntarily?

6 UNIDENTIFIED DEFENDANT: Yes.

7 OTHER DEFENDANT: Yes, Your Honor.

8 THE COURT: All right.

9 Okay. I find that both jury waivers have been
10 made freely, willingly, and knowingly.

11 And the Commonwealth, are you ready to proceed?

12 ATTY. KOLMAN: Yes, Your Honor.

13 THE COURT: Okay.

14 ATTY. KOLMAN: Your Honor, we have reached an
15 agreement, a stipulation in regards to the police
16 report in this matter.

17 THE COURT: Okay. Are there any other
18 stipulations?

19 ATTY. KOLMAN: We do have a stipulation as
20 well of the disclaimer.

21 ATTY. SUNESON: Right. The stipulation of
22 fact, Judge. I believe it's filed with the Court.

23 THE COURT: I have that.

24 Do you want to sign that, Mr. Kolman?

1 ATTY. KOLMAN: Yes, Your Honor.

2 ATTY. SUNESON: And that would be for both
3 defendants, Judge.

4 THE COURT: Maybe Mr. Heroux could sign that
5 as well.

6 (Pause.)

7 THE COURT: Thank you.

8 ATTY. HEROUX: Thank you, Your Honor.

9 (Pause.)

10 THE COURT: Okay. Does the Commonwealth
11 intend to call any witnesses?

12 ATTY. KOLMAN: Oh, no, Your Honor.

13 The police report is stipulated to,
14 (inaudible), Your Honor, (inaudible) would testify to
15 what was in the police report.

16 THE COURT: Right.

17 You may proceed.

18 ATTY. KOLMAN: Thank you, Your Honor.

19 Your Honor, the Commonwealth, reading from the
20 police report, it's police report, report number
21 R02-0773, written by Investigator Philip Warish at the
22 Taunton Police Department.

23 Briefly, the facts of the police report are the
24 following, Your Honor.

1 This involves an investigation that occurred from
2 July 1st, 2000 to June 2001 where the defendants, Dimas
3 Amaro and Joseph Amaro, were in the business of selling
4 black boxes, also called converter boxes. The purpose
5 of these boxes are that they can see receive every
6 channel from a cable company. If a user were to hook
7 up these boxes, they can receive every channel from the
8 cable company; and they can receive every channel.

9 Now, in this investigation, they have an
10 informant, a Abby Vasconcellos, who at the time was in
11 a dating -- or had been in a dating relationship with
12 one of the co-defendants, a Dimas Amaro.

13 She spoke to an individual who worked for an
14 individual named Michael Wood, who was an AT&T
15 investigator. Upon her conversation with Mr. Wood, she
16 stated that the defendant and the co-defendant were in
17 the business of shipping large boxes of -- large
18 shipments of converter boxes where they were received
19 from several companies; they would receive them and
20 then they would sell them out to other individuals,
21 including online, which would be -- online, in which
22 Dimas Amaro would either post it on E-bay, as well as
23 through Joe Amaro, who would sell locally.

24 Your Honor, several UPS -- several boxes were sent

1 to UPS which were seized, and in these boxes -- this
2 occurred around a period of March 2nd, 2001 to March
3 1st, 2001, (sic) Your Honor. And when these packages
4 were seized, several items were found.

5 The first package was addressed to Dimas Amaro,
6 which contained -- at the residence of 333 Cohannet
7 Street. It contained three converter boxes along with
8 a note indicating that two of the boxes were new but we
9 were unable to get it to scramble (phonetic); a third
10 box, which had been working properly, had suddenly
11 stopped. This had a return address of an individual
12 who was located in Texas. It appears she's looking
13 either for a replacement or a refund.

14 The second package seized, Your Honor, was to --
15 addressed to Joe Amaro. It had a total of eight
16 converter boxes and four remote controls. It appears
17 that upon investigation these boxes had been returned,
18 after examination, as several small notes had been
19 attached describing what had been wrong with the
20 converter boxes. This was shipped from Wholesale
21 Electronics, which is a company in Las Vegas, Nevada,
22 which ships out converter boxes.

23 The third package as well was addressed to the
24 co-defendant, Joseph Amaro. Again, this time it's 12

1 converter boxes, with instructions how to use converter
2 boxes to decode signals. It also had a credit card
3 receipt, and it was again returned. The address was
4 from Wholesale Electronics.

5 The fourth package was addressed to Dimas Amaro,
6 and it contained a global converter as well as a remote
7 box and wires.

8 All four of these packages were seized by the
9 Taunton Police Department.

10 In addition, it appears that more boxes were
11 seized on April 7, 2001, of pretty much the same
12 variety, Your Honor.

13 Investigation revealed a UPS shipment in excess of
14 100 packages delivered to the defendants. This was
15 from Wholesale Electronics. As well as there were 10
16 packages from another company called Clearview Cable,
17 with 16 packages from INB Group electronics.

18 And in total there were at least 108 packages that
19 were shipped to the defendant's address at -- the
20 co-defendants' address, at 333 Cohannet Street.

21 Your Honor, in addition, an employee of AT&T
22 (inaudible), Craig Frappier, with knowledge that some
23 of these with knowledge that some of these converter
24 boxes were being sold online, went to a site on -- went

1 to a web site for -- excuse me. Went to a site to buy
2 the boxes and sent an e-mail, which was registered to,
3 I believe it was an E-bay site. The e-mail was
4 addressed to Dimas Amaro, where he requested to buy
5 some boxes, converter boxes. These boxes were sold to
6 him, and he did send the money for the boxes.

7 Your Honor, based on this information, police
8 obtained search warrants for the residences of Dimas
9 Amaro and Joe Amaro, which was located at 333 Cohannet
10 Street, first floor and the second floor.

11 Among the items seized were two computers in the
12 living room -- this is in regard to Dimas Amaro's
13 residence. Two computers in the living room were
14 seized which had a customer list of individuals who the
15 converter boxes were sold to. In addition, also found
16 were 900 mailers which were used to -- similar to the
17 one used to -- similar to the one used to send to one
18 of the investigators in this investigation.

19 There were also 112 U.S. Postal Service delivery
20 confirmations, and there were receipts, it appears,
21 from these (inaudible), from April 21st to June 16th,
22 2001.

23 One of these mailings was to the investigator who
24 bought the converter box, Your Honor.

1 Your Honor, in addition, both in regard to this
2 warrant, they spoke to the defendant, who made several
3 statements.

4 THE COURT: Is this Mr. Dimas -- I mean,
5 Dimas?

6 ATTY. KOLMAN: Dimas Amaro, yes.

7 He told the officer that it's not illegal to sell
8 the cable converter boxes. He sent them with a
9 disclaimer, which was stipulated to, Your Honor.

10 In addition, he advised the officer that he was
11 not making very much money on these converter boxes.
12 He had not been in business very long, and that he had
13 checked with his attorney and was assured it was a
14 legal (phonetic) -- it was illegal for him to sell the
15 boxes after they were seized at UPS.

16 Your Honor, it should about noted that after the
17 boxes were seized at UPS, the defendants did switch the
18 address of where to send the boxes to, and used their
19 grandparents' address, as opposed to their own.

20 Your Honor, also the second floor of the
21 apartment, the residence of Joseph Amaro, was also
22 searched pursuant to a warrant. Found were \$7,800 in
23 U.S. currency, as well as an address book, which the
24 defendant Joe Amaro claims contains numbers of

1 Wholesale Electronics and Clearview Electronics, as
2 well as particular notes in regard to the cable
3 converters.

4 The defendant Joe Amaro also had a conversation
5 with police officers where he stated that several
6 individuals in the community had purchased several
7 boxes. In addition, he wanted to know what was going
8 on and asked why -- about the packages as there were
9 receipts from UPS. He stated to the officer that he
10 told his brother Dimas Amaro that, because they weren't
11 making much money on the boxes and they had been
12 seized, to get out of the business. He also indicated
13 that they weren't making much money on boxes as they
14 had to pay shipping and frequently received defective
15 boxes.

16 Investigation was made on the boxes that were
17 seized, Your Honor. They were able to scramble
18 (phonetic) cable channels.

19 And the witness Abby Vasconcellos had stated to
20 the officers that she had witnessed both defendants
21 selling these boxes in the period of time, Your Honor.

22 That's Commonwealth's -- Commonwealth rests, Your
23 Honor.

24 THE COURT: Commonwealth rests?

1 ATTY. KOLMAN: Yes, Your Honor.

2 THE COURT: Mr. Suneson?

3 ATTY. KOLMAN: Actually, I'm sorry. If I may
4 submit the police report.

5 (Commonwealth's Exhibit 1, police report,
6 could have been admitted here.)

7 ATTY. SUNESON: Judge, we'd move for a
8 required finding of not guilty, Your Honor.

9 And the reason for it, Judge, is that the
10 Commonwealth's -- one of the elements they have to show
11 was the intent to defraud.

12 With the stipulation of fact and my brother's --
13 even all of it here, is that as a factual matter, my
14 client -- and it came forth, with regard to their
15 investigation of those cable boxes to begin with, that
16 when they wiped the hard drives, on each hard drive
17 there was a disclaimer to the effect that they were not
18 advocating the theft of cable services.

19 The boxes themselves are not illegal to possess.
20 They're not illegal to sell. The only illegality comes
21 in if you intend to defraud the cable company.

22 With that stipulation of fact, Judge, there is no
23 intent to defraud. That it's sold to customers, and
24 customers can buy that particular box instead of

1 renting a box from a cable service. As long as they
2 take that box and they do what they do.

3 It's as if, Judge, going to the store on the
4 corner here, and asking them, I want a package of
5 rolling papers for my Bugle cigarettes. As long as I
6 take those packets of rolling papers for my Bugle
7 cigarettes and I sell them with my Bugle cigarettes for
8 tobacco, I'm not committing any crime.

9 It's the fact that if I sell those packages of
10 rolling papers to somebody that I know is going to and
11 I know in fact is using them for marijuana cigarettes,
12 then in fact one could make the argument that there's
13 an intent there.

14 In this particular case, the Commonwealth has
15 not -- beyond all reasonable doubt, to even get to the
16 jury --

17 THE COURT: That's -- that's --

18 ATTY. SUNESON: No, that's -- just to get to
19 the jury.

20 THE COURT: It's a different standard,
21 different standard.

22 ATTY. SUNESON: I'm getting ahead of myself.

23 THE COURT: Go ahead.

24 ATTY. SUNESON: But just to get to the jury,

1 there has to be some evidence, somewhere, for the
2 Commonwealth. The best light, best for the
3 Commonwealth here: That my client intended to defraud
4 somebody, or this particular company. And with that
5 stipulation of fact - that was before the Court - I
6 don't believe this case will ever get to the trier of
7 fact on that particular element.

8 THE COURT: Mr. Heroux, do you want to add
9 anything? I assume you're agreeing --

10 ATTY. HEROUX: No, I would certainly join
11 along with my brother. I would say it more eloquently
12 than he does, but he's brand new at this job, so.

13 THE COURT: Mr. Kolman?

14 ATTY. KOLMAN: Yes, Your Honor.

15 THE COURT: Do you want to respond to the
16 motion?

17 ATTY. KOLMAN: Yes, Your Honor.

18 Commonwealth believes that it does get by, Your
19 Honor, under the burden for a required finding.

20 The defendants were selling black boxes. The
21 reason why block boxes are sold, Your Honor, is so that
22 people can get cable channels. I would argue that
23 usually it's for people to get cable channels and not
24 pay for it. Otherwise they would have to go through

1 the cable company themselves.

2 In addition, there's more -- there's more of an
3 indication of the defendants' culpability; Once the
4 items were seized from UPS, they changed the address to
5 their grandparents' address, Your Honor, so that they
6 would no longer have their name.

7 Your Honor, I feel that even with the disclaimer,
8 the defendants both knew what they were doing, and
9 their intent was to defraud the cable company.

10 For these reasons, the Commonwealth feels that it
11 meets it is burden to get past the required finding.

12 Thank you.

13 THE COURT: Looking at the evidence in the
14 light most favorable to the Commonwealth under the
15 Lattimore standard, I'm going to deny both defendants'
16 motion for a required finding of not guilty on both
17 cases right now.

18 Does counsel -- do you wish to be heard any
19 further with respect to arguing?

20 ATTY. SUNESON: No, Judge.

21 THE COURT: Okay. And you don't intend to
22 offer any evidence other than the stipulation?

23 ATTY. SUNESON: Just the stipulation, Judge.

24 THE COURT: Okay. Do you want to add

1 anything further, Mr. Kolman?

2 ATTY. KOLMAN: No, Your Honor. It's the same
3 argument for reference to the hyber (phonetic).

4 THE COURT: All right. It's my understanding
5 this is a specific intent crime under 42A, and I've
6 read the statute. I feel that the Commonwealth has not
7 met their burden with respect to the element of intent,
8 and -- beyond a reasonable doubt. Therefore, there's
9 some reasonable doubt in my mind as to whether both
10 defendants intended to defraud, in accordance with the
11 statute. Therefore I find you both not guilty.

12 ATTY. KOLMAN: Thank you.

13 THE CLERK: Dimas Amaro, Docket Number 02,
14 1054, count of unlawful possession of unlawful TV
15 devices, not guilty.

16 Joseph Amaro, docket number 02, 1053, unlawful
17 possession of a TV device, is also not guilty.

18 THE COURT: Is there any other reason to hold
19 either of them?

20 THE CLERK: I think that's it, Judge.

21 THE COURT: Okay.

22 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

23 UNIDENTIFIED SPEAKER: Thank you.

24 THE COURT: Mr. Kolman, are these --

1 ATTY. KOLMAN: These (inaudible)
2 these (inaudible).

3 THE COURT: For evidence. Papers (phonetic)
4 from the --

5 ATTY. KOLMAN: Yes, Your Honor.

6 THE COURT: -- the cable company?
7 (Commonwealth's Exhibit, xxx,
8 were admitted into evidence.)

9 ATTY. KOLMAN: If I may have one second, Your
10 Honor?

11 (Commonwealth's Exhibit 2, records,
12 may have been received.)

13 THE COURT: Sure.

14 (Hearing concluded.)

15
16 Certificate of Accuracy
17 I, Ellen H. Dibble, do hereby certify that the foregoing is
18 a true and accurate transcript, prepared to the best of my
19 ability, of the designated portions of the cassettes
20 provided to me by the appellants or appellees of a hearing
in the matter of the Commonwealth of Massachusetts versus
Joseph Amaro, Docket Number 0231 CR 1053 and Commonwealth of
Massachusetts versus Dimas Amaro, Docket Number 0231 CR
1054, before Gilbert Nadeau, J., in Taunton District Court,
Taunton, Massachusetts, on February 9, 2004.

21 Date: 11/1/05 Transcriber: Ellen H. Dibble

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